

BEFORE THE IOWA CIVIL RIGHTS COMMISSION

ABDULMAJID BACHELANI, Complainant,

VS.

DES MOINES TRAFFIC TRANS. DEPT., CITY OF DES MOINES, and DES MOINES CIVIL SERVICE COMMISSION, Respondents.

CP# 05-85-13013

THIS MATTER, a complaint filed by Abdulmajid Bachelani (Complainant) with the Iowa Civil Rights Commission (Commission) charging Des Moines Traffic Transportation Department, City of Des Moines, and Des Moines Civil Service Commission (Respondent) with discrimination in employment on the basis of national origin, came on for hearing in Des Moines, Iowa, on the 28th day of July 1987, before lone G. Shaddock serving as Hearing Officer. Complainant was represented by Teresa Baustian, Assistant Attorney General. Respondents were represented by Nelda Barrow Mickle, City Solicitor and Ivan T. Webber, Corporate Counsel.

Any rulings reserved and not ruled on in this proposed decision are denied.

The issues in this case are as follows:

ISSUE I - Is the Des Moines Traffic Transportation Department an appropriate party in this complaint?

ISSUE II - Was Complainant's application for parking meter checker with the City of Des Moines screened out; because of his national origin?

FINDINGS OF FACT:

1. The Complainant, Abdulmajid Bachelani, timely filed verified complaint CP# 05-85-13013 on May 24, 1985, charging the Des Moines Traffic Transportation Department, City of Des Moines, and Des Moines Civil Service Commission, with discrimination in employment on the basis of national origin.
2. Investigation was completed, probable cause found, conciliation attempted but failed and Notice of Hearing was issued on December 30, 1986.
3. Complainant had lived with his family for the past 5 years in Des Moines, Iowa. He was born in Kenya, Africa and is of Indian origin. His education background is in Kenya plus 2 years of college at DMACC in Ankeny, Iowa, studying computers. He is a citizen of the United States and had been in the United States for about 12 years.
4. Complainant had held the following jobs prior to his application with the City of Des Moines:

- a. American Republic Insurance as a claims examiner for about a year;
- b. Sherwin-Williams as a warehouse clerk for about 7 months.;
- c. Butler Paper as a paper cutter for about 1 1/2 years;
- d. Fawn Engineering as a general laborer and packer for about 5 months;
- e. Norwest Bank working with computers for about 3 years.

5. In early 1985, on one of his trips to Job Service, Complainant saw a notice for a Parking Meter Checker examination which was open to the general public. The minimum qualifications were as follows:

Graduation from high school and two years of experience in general office work or work involving considerable public contact, or any equivalent combination in which education and experience are interchangeable at the rate of one year of education for one year of experience.

Required also was possession of a valid motor vehicle operator's license issued by the State of Iowa and ability to acquire a motorcycle driving license within three months after appointment.

The method of exam given was that the top 25 applicants deemed best qualified would be scheduled for an oral examination. The application deadline was March 20, 1985, and the notice was released on March 13, 1985.

6. Complainant filed his application for the parking meter checker on March 20, 1985. The Civil Service Commission of the City of Des Moines wrote Complainant a letter dated March 29, 1985, informing him that his application was considered ineligible for the following reason(s): "Lacks two full years experience in general office work or work involving considerable public contact."

7. Complainant made no further contact with the City regarding the rejection of his application.

8. Complainant, during his employment with Northwest Computer Services, worked on the 5th floor of the Financial Center in a security area. Only authorized personnel could routinely enter. Only bank employees, couriers, technicians and suppliers visited the area. Contact was generally at a window. He worked in this situation for approximately 35 months and believed that it should be considered general office work and work with public contact.

9. Dorenda Walters, formerly Dorenda Maxwell, was the personnel technician for the City of Des Moines Civil Service Commission during the time at issue and processed the applications for the parking meter checker position. She testified that there were 270 applications for the position of checker and that 49 applicants, including Complainant, were rejected for failure to meet minimum qualifications: 30 white, 15 Black, 2 Asian, 1 Hispanic and Complainant who is Indian. A total of 27 who met the minimum qualifications were actually interviewed of those

who were minimally qualified but not interviewed, 122 had more than 35 months experience. All who were interviewed had more than 35 months experience. Of the 27 interviewed, 21 were white, 5 were Black and 1 was Hispanic. Two were actually hired, one white and one Hispanic. One person hired had 57 months experience which included experience as a parking meter checker. The other person had 86 months of experience.

Walters holds a master's degree from Iowa State University in industrial relations and she also received on-the-job training in evaluating applications through an internship program.

10. Iowa Code chapter 400 provides for the appointment of a civil service commission which determines qualifications for positions under civil service and certifies a list of names of qualified persons to the city council. The job description is written by the personnel department and department with a position to be filled. The list of persons qualified is given by the City Council to the department with the opening. The department picks their employee from that list. The list is good for a year. In the case at issue there were two steps: 1) the application; and, 2) an oral examination. Commission staff selected from the applicants those who would receive an oral examination. In this case, the number selected was 27. Complainant only participated in the first step since his application was not selected for step 2, the oral examination. His name, therefore was not on the list submitted to the City Council and thereafter to the Department of Traffic Transportation.

CONCLUSIONS OF LAW

1. The complaint was timely filed, processed and the issues in the complaint are properly before the Hearing Officer and ultimately before the Commission.

2. The Des Moines Traffic Transportation Department, City of Des Moines, and Des Moines Civil Service Commission are "persons" as defined in Iowa Code section 601A.2(2)(1985) and are therefore subject to Iowa Code section 601A.6, and do not fall under any of the exceptions of §601A.6(5). The applicable statutory provision is as follows:

1. It shall be an unfair or discriminatory practice for any:

a. Person to refuse to hire, accept, register, classify, or refer for employment ... because of the ... national origin ... of such applicant...

ISSUE I - Is the Des Moines Traffic Transportation Department an appropriate party, in this complaint?

It is concluded that the Department of Traffic Transportation of the City of Des Moines is clearly included under the definition of "person" as defined in Iowa Code 601A.2(2) and is, therefore, an appropriate party in this complaint. It is also concluded, however, that Complainant's name was not included on the list submitted to that Department, therefore, there was no discriminatory action by that Department and the complaint against the Department should be dismissed.

ISSUE II - Was Complainant's Application For Parking Meter Checker With The City Of Des Moines Screened Out Because Of His National Origin?

1. The United States Supreme Court set out the basic allocation of burden and order of presentation of proof in a case alleging discriminatory treatment in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). In Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 256, 101 S.Ct. 1089, 1093, 67 L.Ed.2d 207, 215 (1981), the Court summarized that burden and order from McDonnell as follows:

First, the plaintiff has the burden of proving by a preponderance of the evidence a prima facie case of discrimination. Second, if the plaintiff succeeds in proving a prima facie case, the burden shifts to the defendant "to articulate some legitimate, nondiscriminatory reason for the employee's rejection." Id. at 802, 5 FEP Cases, at 969. Third, should the defendant carry this; burden, the plaintiff must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination. Id. at 804, 5 FEP Cases at 907.

This basic allocation of burdens and order of presentation of proof was adopted by the Iowa Supreme Court in Linn Cooperative Oil Co. v. Quigley 305 N.W.2d 729,733 (Iowa 1981).

2. The complainant carries the initial burden of offering evidence adequate to create an inference that actions by a respondent were based on a discriminatory criterion which is illegal under the law, International Brotherhood of Teamsters v. United States, 431 U.S. 324, 358, 97 S.Ct. 1843 (1977). In evaluating the evidence to determine whether the complainant has succeeded in establishing that inference, which is referred to as a "prima facie" case, the Commission and the Iowa Court have relied on McDonnell-Douglas. The criteria established in McDonnell- Douglas were specific to a qualified applicant of a protected clan who applied for a job and was rejected despite the qualification.

3. In cases of failure to hire, a prima facie case can be established by proving the following:

- a. Complainant was a member of a class protected under the statute;
- b. complainant applied and was qualified for an available position;
- c. despite Complainants qualifications respondent rejected the application;
- d. after the rejection, the position remained open and the employer continued to seek applicants with similar qualifications.

In the case at issue, Complainant was of Indian origin and, therefore, a member of a class protected under the statute. He filed his application for the position of parking meter checker. His application was not selected for the second step, that of oral examination. The position remained open as the Civil Service Commission continued to seek applicants with similar qualifications. Although Respondent claims Complainant was not minimally qualified for the job, it is concluded that he was so qualified and has, therefore, established a prima facie case of discrimination.

4. The burden of persuasion remains with the Complainant, however, a prima facie case creates a "presumption" of discrimination which, if believed, will require a finding of discrimination. Burdine, 450 U.S. 248, 101 S.Ct. 1089. If the employer desires to dispel this presumption, evidence must be produced showing "some legitimate, nondiscriminatory reason" for the challenged action. McDonnell Douglas, 411 U.S. at 803, 93 S.Ct. at 1824, 36 L. Ed. 2d at 668. The employer need not persuade the trier of fact that it was action motivated by the proffered reason.

It is sufficient if the defendant's evidence raises a fact as to whether it discriminated genuine issue or against the plaintiff. To accomplish this, the defendant must clearly set forth, through the introduction of admissible evidence, the reasons for the plaintiff's rejection. The explanation provided must be legally sufficient to justify a judgment for the defendant. (footnotes omitted)

Burdine, 450 U.S. at 254, 101 S. Ct. 1094.

Adapting the above order of presentation of proof to this case, Respondent's offer of evidence consisted of the testimony of two Civil Service Commission staff persons, Dorenda Walters who made the selection of qualified applicants and Reginald Sipfle, civil service administrative officer. They testified that the oral examination was given only to the top 27 applicants of 270 applications. Walters testified that Complainant's application was one of 49 which were rejected for failure to meet minimum qualifications. Of those who were minimally qualified, but not interviewed, 122 had more than the 35 months experience claimed by Complainant.

The minimum qualifications given which are in question are the two years of experience in general office work or work involving considerable public contact. Complainant's rejection was based on his not meeting those qualifications. His application includes experience in construction work, packing of vending machines, paper cutting, and approximately three years in data processing, a job from which he was discharged. He indicated on the application that he thought the discharge was unjust. His specific duties in the data processing job were given as follows:

Reconciling and balancing computer printout, running IBM sorters, 1419 and 3890 and cash letter, CRT...

Only two other applications were presented into evidence. Of the two applications presented in the record and in evidence, one applicant had considerable experience in both general office work and public contact. One person was hired and although the experience with data processing was considered, she did in fact, have experience as a temporary employee in that very position for which applications were taken. Although Complainant, in the hearing, attempted to support his belief that his data processing position was general office work and did include public contact, his application did not so indicate.

The Respondent has clearly set forth its reasons for rejecting Complainant.

5. The next step in the basic allocation of burdens subsequent to the employer's articulation of legitimate nondiscriminatory reasons for its actions is the opportunity for the Complainant to prove by a preponderance of the evidence that the reasons given were pretexts that merely veiled the Respondent's discriminatory practices.

Although the Hearing Officer agrees that the combination of his name, Abdulmajid Bachelani, plus his origin in Kenya, Africa, throws up a flag as to his national origin and that his application could be screened out on that basis, in this case Complainant has not proven by a preponderance of the evidence that the reasons given by Respondent were pretextual and merely veiled Respondent's discriminatory practice. The only two persons whose applications are in the record were more qualified than was complainant.

It is concluded that this case should be dismissed.

RECOMMENDED DECISION AND ORDER

1. The Complainant, Abdulmajid Bachelani, has failed to establish a violation of Iowa Code section 601A.6, in his failure to be selected for the oral examination by, the Des Moines Civil Service Commission.

2. This case, CP #05-85-13013, is dismissed.

Signed this 25th day of September, 1987.

IONE G. SHADDUCK,
Hearing Officer

FINAL DECISION AND ORDER

The Iowa Civil Rights Commission has received and reviewed the Hearing officer's Proposed Findings of Fact, Conclusions of Law, Recommended Decision and Order dated September 25, 1987.

On October 30, 1987, the Iowa Civil Rights Commission, at its regular meeting, adopted the Hearing officer's proposed decision as its own Findings of Fact, Conclusion of Law, Decision and Order.

Signed this 18th day of November, 1987.

JOHN STOKES, Chairperson

Iowa Civil Rights Commission